IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.1836 of 2007

Mrs.Santosh Khanna & anr. Petitioners
Vs.
Mr.Pradeep Mehra Respondent

Mr.Shashi Jain i/b. Shashi Jain & Co. for petitioners.

CORAM: B.H.MARLAPALLE,J.

March 22, 2007.

P.C.

. Heard the learned counsel for the petitioners who are aggrieved by the order dated 8/2/2007 passed by the learned Judge of the Court of Small Causes at Mumbai. By the said order the application filed at Exhibit 6 in R.A.E. Suit No.1144/1797 of 2005 has been allowed by appointing Shri H.G. Samant, an Architect as the Court Commissioner to inspect the suit premises within two months and to submit the report accordingly on or before 15/3/2007. It appears, on account of the pendency of this petition the period for submission of the Court Commissioner's report has been extended.

. The application at Exhibit 6 was filed by the plaintiff in the suit which has been filed for ejectment of the defendant-tenant on the ground of

unauthorised construction of permanent nature carried out by them and also on the ground that defendant no.2 was inducted in the suit premises unauthorisedly. It is true that the said application was moved belatedly i.e. in December 2005 after about eight months of filing of the suit and it was also contended by the defendants that the application was moved with an intention to use the appointment of Court Receiver for collecting evidence. The learned Judge of the trial Court noted that one of the grounds for ejectment prayed for was additions and alterations of permanent nature carried out by the defendant no.1 in the suit premises and the said alterations were done after the premises were let out the defendant no.1. On the other hand the defendant denied to have constructed or made any alterations, leave alone unauthorizedly or illegally. The learned Judge of the trial Court was, therefore, satisfied that if an architect is appointed as a Court Commissioner he would be able to assist the Court by submitting his report and in any case by the impugned order the Court has not formed any opinion either way. The Court Commissioner has been appointed to inspect the suit premises within two months and submit the report in writing of the factual position

as may be seen during the inspection visit. The Court Commissioner's fees has been directed to be paid / deposited by the plaintiff. Therefore, this order does not cause any prejudice to the defendants and even after the Court Commissioner submits his report, undoubtedly it will be subject to the say of the respective parties to be filed after the report is submitted. Hence, there is no case made out to cause interference in the interlocutory order challenged in this petition under Article 227 of the Constitution.

. The petition is rejected summarily. Oral application for stay is hereby rejected.

(B.H